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Manichean Democracy
The Death of the American

Tens of millions of Americans now view each other as "animals" purely because of their party identity;[1] "more than two-thirds of Republicans (and half of Democrats) see the other party as 'downright evil.'"[2] No wonder then that in the past five years "acts of political violence in the United States have skyrocketed" alongside the percentage of Americans who believe that they would be justified in the use of violence to advance their political goals.[3] Americans in the twenty-first century are more divided than almost ever before.[4] No longer do they see in each other fellow Americans. Now, they see only Democrats and Republicans.

"Political violence has a long history in the United States," but property, not people, were the typical targets.[5] This is reversing.[6] And now, per the Center for Politics at the University of Virginia, "many Americans question democracy's future."[7] Clearly, the American partisan culture war must be addressed – the nation is fast approaching an inflection point. One-in-three contemporary American partisans favor State secession,[8] and a

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[1]   Rachel Kleinfeld, *The Rise of Political Violence in the United States*, 32 Journal of Democracy 160 (2021), https://www.journalofdemocracy.org/articles/the-rise-of-political-violence-in-the-united-states/#f2 (citing Nathan P. Kalmoe and Lilliana Mason, *Radical American Partisanship: Mapping Violent Hostility, Its Causes, and the Consequences for Democracy*, University of Chicago Press, at 105, 109, forthcoming 2022).

[2]   *Id*.

[3]   *Id*.

[4]   Boxell et al., *Cross-Country Trends in Affective Polarization*, National Bureau of Economic Research, at 2 (2020), https://www.nber.org/papers/w26669.

[5]   Kleinfeld, *The Rise of Political Violence in the United States*

[6] *Id*.

[7]   Center for Politics, *Voice of the Voter Survey*, Project Home Fire, at 11 (2023).

[8]   *Id*.

population representing less than a third of Americans fired on Fort Sumter in 1861.[9] With more than a third of American partisans today expressing willingness "to use violence to stop [the other side] from achieving their goals,"[10] the United States certainly faces dire peril.

This paper discusses a facet of how the United States arrived to this point and possible solutions. To summarize: the American partisan crisis is at least partially a result of the coalescence of an attention market, news as a market commodity, and plurality voting. Section I describes the specifics of the American partisan conflict; that it is a culture war between two identities rather than ideologies. Section II begins the exploration of the conflict's genesis, detailing how attention markets create echo chambers and how echo chambers radicalize participants. Section III goes on to discuss how news as a market commodity within an attention market generates echo chambers which divide truth and intensify conflict. Section IV then demonstrates that plurality voting systems generate two-party environments, that two-party environments induce deployment of negative advertisements, and that negative advertisements affectively polarize onlookers. The paper concludes by weaving these pieces together to narrate the emergence and existential dangers of partisan echo chambers in the United States, and by offering remedial reforms.

I. The American Partisan Conflict – Identity, Not Ideology

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[9]   *American Military History*, Office of the Chief of Military History of the United States Army, Chapter 9, https://history.army.mil/books/AMH/AMH-09.htm.
[10]   Center for Politics, *Voice of the Voter Survey*, Project Home Fire, at 12 (2023).

The United States is affectively polarizing faster than any other Western democracy,[11] with half of American partisans "view[ing] individuals who strongly support [the other] party as a threat to the American way of life."[12] Affective polarization is a measurement of "the extent to which partisans view each other as a disliked out-group;" ideological polarization instead measures the divisions between policy choices.[13] Many blame ideological polarization for the experienced affective polarization in the United States, but the animosity between American partisans is not couched in ideological disagreement. Rather, opposing partisans hate each other purely because they identify as opposing partisans. The American partisan conflict is not between liberals and conservatives, but between Democrats and Republicans. Identity, not ideology, divides the American electorate.

That said, the reflective trends of ideological and affective polarization are undeniable. Over a span of two decades, the proportion of partisans possessing an unfavorable opinion of the opposition and the proportion expressing consistently conservative or consistently liberal views have both increased: In 1994, 57% of Democrats disliked Republicans and 68% of Republicans disliked Democrats; in 2014, these figures rose to about 80% for both parties.[14] During this same time period, the proportion of Americans

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[11] Boxell et al., *Cross-Country Trends in Affective Polarization*, National Bureau of Economic Research, at 2 (2020), https://www.nber.org/papers/w26669.

[12] Center for Politics, *Voice of the Voter Survey*, Project Home Fire, at 12 (2023).

[13] Iynegar et al*., Affect, Not Ideology: A Social Identity Perspective on Polarization*, 76 The Public Opinion Quarterly 405, 406 (2012), https://www.jstor.org/stable/344c7d05-ddb7-3339-b508-99451740addf.

[14] *Political Polarization in the American Public*, Pew Research Center (2014), https://www.pewresearch.org/politics/2014/06/12/political-polarization-in-the-american-public/.

expressing consistently conservative or consistently liberal views doubled.[15]

Another illustration of the parallel trends is that 92% of Republicans in 2014 were ideologically to the right of the median Democrat, up from 64% in 1994, and 94% of Democrats were to the left of the median Republican, up from 70%.[16]

Similarly, Congress – ostensibly a reflection of the electorate – is also more ideologically polarized than ever before. As of 2014, no ideological overlap between the parties exists in either chamber; every Republican is more conservative than every Democrat. Contrarily, in 1973, "240 representatives and 29 senators were in between the most liberal Republican and most conservative Democrat in their respective chambers."[17] Another metric of the Congressional ideological drift is the partisan gap, a measure of the proportion of representatives in each party that respond similarly or differently from one another. Regarding the social safety net, the partisan gap increased from 19 points in 1994 to 38 points twenty years later – in 2014, 66% of Republican representatives believed that "poor people today have it easy because they can get government benefits without doing anything in return" while only 28% of Democrat representatives agreed. Partisan gaps have also formed on issues where none existed before. In 1994, "64% of Republicans and 62% of Democrats viewed immigrants as a burden on the country; today 46% of Republicans but just 27% of Democrats say this." Conclusively, of ten items surveyed, nine revealed a wider partisan

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[15] *Political Polarization in the American Public*, Pew Research Center (2014), https://www.pewresearch.org/politics/2014/06/12/political-polarization-in-the-american-public/.

[16]   *Id.*

[17]   *Id.*

gap from 1994 to 2014.[18] Ideological polarization has certainly mirrored the trajectory of affective polarization.

However, we have reason to reject ideological polarization as an impetus behind American affective polarization. For one, most Americans "have difficulty correctly locating parties on issue scales;"[19] American partisans hold increasingly negative feelings towards their opposition without knowing how ideologically distinct they are. The inability to locate parties on issue scales further denotes that partisans rarely think about the ideology of their own party; it is safe to say that ideology is not the focus of the typical American partisan.

In support is Romain Lachat's study, finding that partisans are highly likely to vote for their respective party independent of their party's position on the left-right scale.[20] Rather than vote for the party which agrees with their ideology, an American partisan votes with their party regardless of the ideological position. Vegetti and Fazekas echoed this finding when observing that how voters consider an issue is not the ideological ramifications of it, "but how the different groups involved in the dispute position themselves in respect to it."[21] American partisans vote based not on the ideological positions of the parties, but in response to the relative positions of the

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[18] *Political Polarization in the American Public*, Pew Research Center (2014), https://www.pewresearch.org/politics/2014/06/12/political-polarization-in-the-american-public/.

[19] Iynegar et al*., Affect, Not Ideology: A Social Identity Perspective on Polarization*, 76 The Public Opinion Quarterly 405, 424 (2012), https://www.jstor.org/stable/344c7d05-ddb7-3339-b508-99451740addf.

[20] Romain Lachat, *The impact of party polarization on ideological voting*, 27 Electoral Studies 687 (2008), https://www.sciencedirect.com/science/article/abs/pii/S0261379408000851.

[21] Federico Vegetti and Zoltan Fazekas, *Party Polarization and Ideological Thinking in Europe*, at 20 (2013), https://federicovegetti.github.io/pdfs/paper_constraint_2013.pdf.

parties themselves. They do not consider the ideology of the issue, only the identities of the parties discussing the issue. Ideology is not the focus of the typical American partisan, only party identity.

Further supporting the independence of affective polarization from ideological polarization is Iyengar et al., finding only "a modest association between economic policy preferences and views of the out-party" with "little change over time in the strength of this relationship."[22] The study reaffirmed that affective polarization is in fact worsening: "on average, the rating of the out-party has dropped by some fifteen points [on a one-hundred-point scale] since 1988."[23] This deterioration is moreover accelerating. The share of partisans voting outgroup members lower than 50, an actively negative bias, increased from 53% in the 1990's to 56% in 2004, to 63% in 2008.[24] Furthermore, "in comparison with 1960, Democrats and Republicans were nearly fifty percent more likely to associate negative traits with opponents than supporters in 2010."[25] Iyengar's team then found that "[c]hanges in evaluations of liberals and conservatives do not exhibit the same pattern as evaluations of parties; rather, both in-group and out-group ratings remain more or less stable over the entire series."[26] American partisan feelings towards ideological out-group members have not worsened while feelings

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[22]   Iynegar et al*., Affect, Not Ideology: A Social Identity Perspective on Polarization*, 76 The Public Opinion Quarterly 405, 409 (2012), https://www.jstor.org/stable/344c7d05-ddb7-3339-b508-99451740addf.

[23]   *Id*. at 412.

[24]   *Id*. Reinforcing this result is Boxell et al, who found that, in 1978, "the average partisan rated in-party members 27.4 points higher than out-party members on a 'feeling themometer' ranging from 0 to 100. In 2020, the difference was 56.3, implying an increase of 1.08 standard deviations[.]" Boxell et al., *Cross-Country Trends in Affective Polarization*, National Bureau of Economic Research, at 2 (2020), https://www.nber.org/papers/w26669.

[25]   Iynegar et al*., Affect, Not Ideology: A Social Identity Perspective on Polarization* at 420.

[26]   *Id*. at 414.

towards partisan out-group members have. The team further noted that "if ideological disagreement has contributed to affective polarization, we should observe considerably sharper thermometer ratings among the sorted partisans... However, the differences in thermometer ratings among the sorted partisans are only modestly higher."[27] If ideology generates the hostility, then ideologically polarized partisans should be more affectively polarized, but they are significantly not. The conflict between Americans is not between ideological schools, but rather between self-identifying subcultures, nations unto themselves.

Given that the distribution of ideologies among the American electorate has remained largely unchanged between now and the 1990's,[28] a period of economic prosperity,[29] the present ideological composition of American partisans can theoretically collaborate and produce quality policy. The present culture war and political disfunction[30] is therefore not inevitable, when considering only ideology.

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[27] Iynegar et al*., Affect, Not Ideology: A Social Identity Perspective on Polarization*, 76 The Public Opinion Quarterly 405, 421 (2012), https://www.jstor.org/stable/344c7d05-ddb7-3339-b508-99451740addf.

[28] Lydia Saad, *U.S. Political Ideology Steady; Conservatives, Moderates Tie*, Gallup (January 17, 2022), https://news.gallup.com/poll/388988/political-ideology-steady-conservatives-moderates-tie.aspx.

[29] The average annual GDP growth rate between 1993 and 2000 was 4.46% with the final year of the decade growing 2.9 percentage points faster than the first year, while between 2011 and 2019 average growth was 2.19% with the final year growing 0.4 percentage points slower than the first year. Both periods of time from which an average is derived here begin two years after a recession, theoretically rendering the nation in similar economic positions of rebounding. *GDP growth (annual %) – United States* World Bank, https://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG?locations=US.

[30] Kayla Guo and Robert Jimison, *Chaos and Frustration Rule as Republicans' Bitter Speaker Fight Deepens*, New York times (Oct. 20, 2023) ("Representative Anna Paulina Luna of Florida" was quoting saying, "We have no speaker … We have a war in the Middle East, and people care more about their own personal ethos than this country." The American House of Representatives has had no speaker for over two weeks, and has held more than five votes over the position).

Identity motivating American affective polarization is in line with the expressive perspective of partisanship. Originally, the ivory tower subscribed to the instrumental perspective of partisanship, defining partisanship as "a running tally of party performance, ideological beliefs, and proximity to the party in terms of one's preferred policies that is affected by current features of the political environment. This conceptualization of partisanship is rooted in the rational choice paradigm, which stresses utility maximization as the driving force behind political decision making and involvement."[31] The expressive perspective contrarily defines partisanship as "an enduring identity strengthened by social affiliations to gender, religious, or ethnic and racial groups."[32] Recently, "[t]he expressive approach has gained growing popularity as a counter to the instrumental approach because it can better account for the stability of partisan attachments, their relative immunity to short-term economic and political fluctuations, the powerful influence of partisanship on vote choice independently of issue preferences, and the power of partisan elites to influence rank-and-file partisan opinion – evidence that is difficult to reconcile with the instrumental model."[33] With the above discussion in mind, this paper supports the expressive perspective, viewing partisanship as a facet of identity rather than a rational choice which is continuously updating.

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[31]   Leonie Huddy and Alexa Bankert, *Political Partisanship as a Social Identity*, Oxford Research Encyclopedias (2017), https://oxfordre.com/politics/view/10.1093/acrefore/9780190228637.001.0001/acrefore-9780190228637-e-250.

[32]   *Id*.

[33]   *Id*.

Confirming partisanship as an identity already helps initially explain the development of American affective polarization. Experimentation repeatedly shows that identifying as a member of a group triggers both positive feelings for other members and negative feelings for the out-group, even when those traits are trivial and even when they are randomly assigned.[34] Simply put, identifying oneself with a group based on any characteristic, including partisanship, seemingly automatically triggers some degree of affective polarization. Further still, the more salient the group affiliation is to the individual, the more biased that individual is towards in- and out-group members. Salience is affected by personal disposition and based on informational factors, such as how often the individual is reminded of their affiliation to the group.[35] In an environment inundated with reminders of one's partisanship which frequently frames the opposition as an existential threat, one could expect heightened saliency of that group. This paper demonstrates how that environment is generated by the interaction between an attention market, the relegation of news to that market, and the usage of plurality voting by the participants of that market.

II.   The American Attention Market – Echo Chamber Effects

'Attention market' describes a system wherein suppliers compete for the literal time-based attention of consumers. In the words of Professor David S. Evans, such a market "involves competition in which platforms acquire time from consumers, with bundles of content and ads, and sell ads

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[34]   Iynegar et al*., Affect, Not Ideology: A Social Identity Perspective on Polarization*, 76 The Public Opinion Quarterly 405, 407 (2012), https://www.jstor.org/stable/344c7d05-ddb7-3339-b508-99451740addf.

[35]   *Id*. at 408.

to marketers to deliver messages during that time."[36] As described by Forbes, the attention market is profitable, and thereby existent, because "hold[ing] a viewer's attention for longer not only leads to greater engagement, enhanced brand recall and improved trust with the consumer, it also positively affects [the company's] bottom line. Simply put, more attention means more sales."[37] The attention market, like any other, is a zero-sum competition for consumer choice, but rather than competing for the dollars of consumers, attention market actors compete for their time.

The modern attention market has learned that appealing to identity best maximizes captured attention. For example, Google employed Guillame Chaslot to design YouTube's recommendation algorithm with a single purpose in mind: maximize watch-time.[38] Chaslot's resulting artificial intelligence software exemplifies the core contemporary attention market strategy. The software gathers data on the internet history of users, identifies patterns in their behavior in relation to other users, and catalogues the user into an identity profile with the users who share similar patterns, all for the purpose of recommending content which the user is most likely to click given their identity profile.[39] Attention market platforms, in this way, show content to users based primarily on the user's identity.

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[36]   David S. Evans, *The Economics of Attention Markets*, Berkely Research Group, Market Platform Dynamics, at 1 (April 15, 2020), https://deliverypdf.ssrn.com/delivery.php?ID=3830990020831140890981060980930830771160470010360570540660940060670700180950660950260350030381070390150410230820001260841001080600830120620880840180000190860821250710610750940881030160751090850900740861130720660101120640030310010780060710641010071055&EXT=pdf&INDEX=TRUE.

[37]   Emilia Kirk, *The Attention Economy: Standing Out Among the Noise*, Forbes (March 23, 2022), https://www.forbes.com/sites/forbesbusinessdevelopmentcouncil/2022/03/23/the-attention-economy-standing-out-among-the-noise/?sh=751cda7a7fda.

[38]   *Rabbit Hole*, New York Times, Episode 1.

[39] *Id*.

A further tactic of attention market actors is demonstrated by what former Facebook president Sean Parker calls a "social validation feedback loop."[40] Attention market platforms utilize advances in neurochemistry to design their user interfaces specifically to be addicting, deliberately triggering the brain's reward mechanisms in a variety of ways to produce the same effects as alcohol and cigarettes – addiction.[41] The social validation feedback loop is only one such means which has proven successful, as demonstrated by the withdrawal symptoms evident among users who quit Facebook.[42] In this manner, attention market platforms operate quite literally as a drug, actively addicting users to maximize captured attention.

The end result of tailored and addictive content is what Google's Chaslot calls content bubbles – echo chambers.[43] People become cocooned by information that their past behavior predicts they will enjoy, based on the past behaviors of similar users (people who share an identity group), and these people feel a biological imperative to keep within that chamber due to the effects of addiction and withdrawal.[44] New and contrary information is thereby excluded from participant perception by identity-based algorithms, essentially coercing users into remaining within the bounds of their

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[40]   MACİT, Hüseyin Bilal, et al. "A RESEARCH ON SOCIAL MEDIA ADDICTION AND DOPAMINE DRIVEN FEEDBACK." *Journal of Mehmet Akif Ersoy Economics and Administrative Sciences Faculty*, vol. 5, no. 3, Dec. 2018, www.researchgate.net/profile/Hueseyin_Macit2/publication/329947955_SOSYAL_MEDYA_BAGIMLILIGI_VE_DOPAMIN_ODAKLI_GERIBILDIRIM_UZERINE_BIR_ARASTIRMA/links/5c3089b2a6fdccd6b592fe1a/SOSYAL-MEDYA-BAGIMLILIGI-VE-DOPAMIN-ODAKLI-GERIBILDIRIM-UeZERINE-BIR-ARASTIRMA.pdf.

[41]   *Id.*

[42]   *Id.*

[43]   *Rabbit Hole*, New York Times, Episode 1.

[44]   MACİT, Hüseyin Bilal, et al. "A RESEARCH ON SOCIAL MEDIA ADDICTION AND DOPAMINE DRIVEN FEEDBACK." (finding that attention market platforms induce withdrawal effects similar to alcoholism and cigarette addiction).

prescribed chamber by neurochemical pressures. With American adults annually spending upwards of 514 billion hours engaging with attention market platforms,[45] the American attention market undeniably pervades American lives; in total, American adults spend a third of their annual waking hours engaging with identity-based echo chambers.[46] The rest of this section describes precisely why this is something to fear.

Opinion formation is scientifically understood. Several of the disparate processes which interact to construct an individual's particular worldview have been studied extensively since the advent of the twentieth century. Three of these potentially render echo chambers existentially dangerous. The first is the rational division of epistemic labor. People are busy, with varying degrees of interest in subjects and issues and activities, and possessing only a finite amount of time to spend on each one. Individuals optimize how they spend this precious resource by "employ[ing] 'cues' and informational shortcuts" to inform their opinions and actions with minimal

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[45] Compared to 325 billion hours working. David S. Evans, *The Economics of Attention Markets*, Berkely Research Group, Market Platform Dynamics, at 2 (April 15, 2020), https://deliverypdf.ssrn.com/delivery.php?ID=383099002083114089098106098093083077116047001036057054066094006067070018095066095026035003038107039015041023082000126084100108060083012062088084018000019086082125071061075094088103016075109085090074086113072066010112064003031001078006071064101007105&EXT=pdf&INDEX=TRUE.

[46] 514 billion / (17.2 * 352 * 258.3 million) = .33. (Annual time American adults spend in echo chambers) / (Annual hours awake among American adults). Ogunwole et al., *Population Under Age 18 Declined Last Decade*, U.S. Census Bureau (August 12, 2021), https://www.census.gov/library/stories/2021/08/united-states-adult-population-grew-faster-than-nations-total-population-from-2010-to-2020.html#:~:text=Population%20Under%20Age%2018%20Declined%20Last%20Decade&text=In%202020%2C%20the%20U.S.%20Census,from%20234.6%20million%20in%202010 (The number of American adults is 258.3 million, as of 2020); Jeffrey M. Jones, *In the U.S., 40% Get Less Than Recommended Amount of Sleep*, Gallup (December 19, 2013), https://news.gallup.com/poll/166553/less-recommended-amount-sleep.aspx#:~:text=Americans%20currently%20average%206.8%20hours,nine%20hours%20sleep%20for%20adults (The average number of hours Americans sleep each night is 6.8, as of 2013).

knowledge.[47] They look to friends they typically agree with on a particular topic, experts they trust or distrust, and popular media personalities like Walter Cronkite and Tucker Carlson. A friend who praises a movie will likely influence an individual's decision to see it, and similarly, the stance of a distrusted expert will cause an individual to adjust their own stance accordingly. The rational division of epistemic labor means that we adopt the positions of those we trust and oppose the positions of those we distrust, with no further consideration beyond the identity of the speaker.

Reinforcement is the second cognitive trait at issue. To put it plainly, agreement from others reinforces one's beliefs.[48] When hearing someone agree with their point of view, listeners have less reason to believe that they are wrong; after all, they ask, what are the chances that both of them are wrong? Individuals are made more confident that they are in the right – reinforced – when they have support. Further consequently, though perhaps not necessarily, reinforced individuals are increasingly likely to perceive dissidents as astray and unreasonable rather than simply as possessing an alternative point of view.[49] Reinforcement then can be said to crystallize beliefs, rigidifying them against future modification, and increasingly so with time spent insulated from alternative points of view.

Conformity is the third and final cognitive trait at issue. "Conformity is the change in a person's behavior to go along with the group, even if the

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[47]   Robert E. Goodin and Kai Spiekermann. *An Epistemic Theory of Democracy,* Oxford University Press, at 9 (2018).

[48]   Baron et. al., "Social Corroboration and Opinion Extremity," Journal of Experimental Social 6 Psychology 32 (1996).

[49]   *Id*.

person does not agree with the group."[50] Conformity, though sometimes

mere momentary compliance, can sometimes manifest as a true

modification of one's beliefs to the perceived group majority. The Newcomb

Bennington College Study recorded incoming conversative students to a

predominantly liberal university, tracking their ideological positions

throughout their four years of attendance and after graduation. The

researchers found that over time the conservative students became

increasingly liberal and, even years after leaving the college, retained their

liberal stance. The study concluded that opinions conform to the majority in

a closed environment, even when they are ideological, and that those shifts

are true rather than deceitful attempts to blend in.[51] Conformity is more

likely when the group contains more individuals and when opinions are

voiced publicly to the whole group, but is almost never experienced when

the group contains even one vocal dissenter.[52] Researchers claim that

conformity occurs because of "social influence," and classify social influence

into two categories: normative, and informational.[53] "In normative social

influence, people conform to the group norm to fit in, to feel good, and to be

accepted by the group."[54] "However, with informational social influence,

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[50]   Spielman et al., *Psychology*, Rice University (Dec. 8, 2014),
       https://openstax.org/books/psychology/pages/12-4-conformity-compliance-and-
       obedience.

[51]   T.M. Newcomb, *Personality and social change; attitude formation in a student
       community*, Dryden Press (1943).

[52]   Spielman et al., *Psychology*. Perhaps of interest also is that "the finding that conformity
       is more likely to occur when responses are public than when they are private is the
       reason government elections require voting in secret, so that we are not coerced by
       others." *Id*.

[53]   Spielman et al., *Psychology*.

[54]   Spielman et al., *Psychology*.

people conform because they believe the group is competent and has the correct information, particularly when the task or situation is ambiguous."[55]

The Asch Experiment exemplifies normative social influence.[56] In the study, groups were shown a series of printed line segments, each of varying lengths, and were asked to identify which out of a grouping of three were the same length as a separate fourth line. The answer was intentionally clear, but each group had only one true participant; the rest were hired actors, and they would advocate for an incorrect choice. "76% of participants conformed to group pressure at least once by indicating the incorrect line."[57] With the situation being so unambiguous, the force behind the participant's conformity can be considered normative social influence – the participant complied in order to fit in and avoid the discomfort of shame, of feeling like an out-group member by disagreeing with the perceived majority, not because they believed the group was correct. In *Psychology of the Internet*, Patricia M. Wallace observed that normative social influence was especially powerful in online interactions. Wallace therein recorded a study which observed groups tasked with choosing the best candidate for a job. There was an objectively best choice given the job requirements and applicant credentials, but each member was given only pieces of information about each candidate. Both in-person and online pools of groups "tended to share positive information about the emerging winning candidate and negative

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[55] Spielman et al., *Psychology*, Rice University (Dec. 8, 2014), https://openstax.org/books/psychology/pages/12-4-conformity-compliance-and-obedience.
[56] Solomon E. Asch, *Effects of Group Pressure Upon the Modification and Distortion of Judgments*, Swarthmore College (1951).
[57] Spielman et al., *Psychology*.

information about the losers, while also suppressing negative information about the emerging winner and positive information about the emerging losers." The proportion was especially high, however, among online group members.[58] Normative social influence describes the phenomenon wherein people go along with their group's decision even when they feel that the group's choice is incorrect or unwise, specifically because the individual values their group membership over their desire to do the correct or wise thing, and this occurs more often in online settings.

The textbook example of informational social influence is when someone sees smoke in a theater while watching a film, are uncertain as to whether it is actually smoke, and thereby follows after the perceived behavior of others. Though the situation may be an emergency, the individual is unsure, and so they default to their perception of their group's perception; if others seem unconcerned, the individual will relax, but if others show signs of fear, the individual will feel that same fear and react in kind. Informational social influence describes the phenomenon of, when given an ambiguous situation, individuals tend to emulate those around them rather than think for themselves. This is perhaps valuable, as it essentially describes a heuristic to seek a second opinion when experiencing uncertainty. Less can be said about normative social influence, which acts primarily as an oppressive force.

In either circumstance, though, viewpoints alternative to the perceived majority tend to experience what sociologist Elisabeth Noell-Neumann dubs

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[58]   Sunstein, Cass R. *#Republic: Divided Democracy in the Age of Social Media*, Princeton University Press, at 157 (2018).

the spiral of silence – the death of minority views due to the pressures of conformity.[59] This is so even if the perceived majority is more truthfully a vocal minority. Diverging opinions which emerge after establishing a perceived majority typically go unsaid in groups because of either the common fear of shame, of becoming an out-group member, or because of the effect of trusting the source of the perception. No matter the cause, the spiral of silence tends to prevent the voicing of dissent necessary to combat conformity, echoing the first-in-time schema of opinion formation suggested by reinforcement. Further exemplifying this first-in-time characteristic is a study conducted by Facebook, which found that comments nearly universally mirror the emotional tone of the comments which came before.[60] A minority opinion can take hold within a group, so long as that minority is the most vocal and speaks first.

Groupthink gives a name to the sequential relationship between conformity and reinforcement. Conformity unites the group to the perceived majority view, modifying individual beliefs, sometimes authentically, to that perceived majority because of either normative or social influences.[61] Authentic modification is moreover much more likely if the source of the perception carries an identity of significance relative to how the listener identifies, given the tendency to delegate epistemic labor – if the listener trusts or dislikes the speaker, the listener's opinions tend to modify

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59   Sunstein, Cass R. *#Republic: Divided Democracy in the Age of Social Media*, Princeton University Press, at 147 (2018).
60   *Id*. at 45.
61   Irving L. Janis, *Victims of groupthink: A psychological study of foreign-policy decisions and fiascoes*, Houghton Mifflin (1972).

authentically accordingly.[62] The spiral of silence thereafter leaves only the perceived majority view as voiced within the group, reinforcing each individual as to that opinion, progressively strengthening the group's collective resolve. Researchers claim that this process underlies why "groups make more extreme decisions than individuals," and "take[] action[s] that individuals would not perform outside the group setting."[63]

Groupthink is influenced by several factors, including group cohesion: when groups possess "a strong sense of connection," maintaining group harmony may become so important to individuals that they refuse to dissent and instead conform.[64] Group cohesion can be affected by a sense of sameness between the group members; a 1965 literature review found that similarities in background, attitudes, values, and identity typically have a positive association with group cohesion.[65] Another study revealed that the more singularly motivated by a cause, or united by an identity, the more rapidly groups arrive at a consensus and the more extreme that consensus is.[66] In the authors' words, "Thus a perception of shared group identity will heighten the influence of others' views on your own."[67] More still, "a perception of unshared identity and relevant differences will reduce that

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[62] Robert E. Goodin and Kai Spiekermann. *An Epistemic Theory of Democracy*, Oxford University Press, at 9 (2018).

[63] Spielman et al., *Psychology*, Rice University (Dec. 8, 2014), https://openstax.org/books/psychology/pages/12-4-conformity-compliance-and-obedience.

[64] *Id.*

[65] Lott, A. J. & Lott, B. E., *Group cohesiveness as interpersonal attraction: a review of relationships with antecedent and consequent variables*, 64 Psychol. Bull. 259 (1965).

[66] Spears et al., "De-individuation and Group Polarization in Computer-Mediated Communication," British Journal of Social Psychology 29, no. 2, at 155 (1990).

[67] *Id.* at 152.

effect, and possibly even eliminate it."[68] Groupthink describes the phenomenon wherein individuals constituting a group all either comply with or authentically modify their beliefs to share the perceived majority position, and in so doing also progressively radicalize each other as to that position to the point of driving group members to take stances and actions they never would have alone. Group cohesion, the sense of shared identity within a group, strengthens groupthink.

Another influence on groupthink is whether the group leader is vocal and assertive, assuming there is a leader, as "this may discourage group members from disagreeing" with that opinion.[69] Insulation also plays a part; with no alternative points of view present, groupthink becomes more likely.[70] Faith in the group's moral rightness can further intensify groupthink, as can the public shaming of dissenting opinions, and the holding of negative feelings toward out-group members.[71] Open discussion moreover tends to act as somewhat of a trigger for groupthink, activating all at once the magnifying effects – after a discussion, group consensus often becomes a stronger endorsement of their position, or, if the discussion regarded an opposing view, a harsher denouncement.[72] In this way, groupthink is a polarizing force in environments containing several distinct opinions, and more so when those opinions are championed by a vocal leader, rarely come into contact, are based in morality, and consider each other through a lens of

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[68] Spears et al., "De-individuation and Group Polarization in Computer-Mediated Communication," British Journal of Social Psychology 29, no. 2, at 152 (1990).
[69] Spielman et al., *Psychology*.
[70] *Id.*
[71] *Id.*
[72] *Id.*

hostility. And so the problem with partisan echo chambers in a diverse democratic republic.

III.   **News as a Market Commodity – Partisan Echo Chambers**

The contemporary American news media environment is remarkable in each of its sheer breadth,[73] the national scale,[74] and the distinct partisan tone taken by many if not most American press agencies.[75] Also of note is the fact of American news being a market commodity – viewers must pay for the service, with either time or money. This requirement that press agencies generate sufficient revenue has proven a dreadful contributory factor to the American partisan conflict.

Under the First Amendment, the press is meant to be free. While the American press has generally remained free from the governmental coercion of law, the same press is not free from the market coercion of money. Journalists need to eat, outlets need to cover their operating costs, and money can largely only be acquired through market transactions. News being a market commodity thereby forces the press to engage in revenue-motivated behavior to sustain operation, and, worse still, the competitive marketplace acts as always to empower the most successful profit-seekers rather than the best, most objective reporters. With the American press presently competing in an attention market, the most successful news media

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[73]   *United States media guide*, BBC News (June 20, 2023) (The United States hosts about 10,000 radio stations, over 1,000 daily newspapers, and, with social media, any individual can act as a reporter accessible by anyone).

[74]   *Digital News Fact Sheet*, Pew Research Center (July 27, 2022) (Digital news outlets can reach anyone, anywhere, and 97 of them "averaged at least 10 million unique visitors per month from October to December of each year analyzed").

[75]   *How to Avoid Misinformation*, University of Central Oklahoma (2023), https://library.uco.edu/misinformation/mediabias (discussing the political bias of news outlets).

outlets are those who capture the greatest amount of attention; those, evidently, who appeal to identities in an addictive manner. News media may even possess an advantage in this environment – Joseph Klapper when studying the effects of mass communication found that, with an increased number of choices for sources of information, along with a sheer increase in the volume information, American voters rely more heavily on their identity to choose between sources and formulate opinions.[76]

Partisanship is the identity of focus for American press agencies, whether intentionally or not. Pew Research Center's finding in 2020 illustrates the situation well: "About two-thirds of liberal Democrats (66%) trust The New York Times" and "just 10% of conservative Republicans trust the Times, while 50% outright distrust it. Rush Limbaugh, meanwhile, is the third-most trusted source among conservative Republicans (38%) but tied for the second-most distrusted source among liberal Democrats (55%)."[77] Similarly, 65% of Republicans trust Fox News, with 61% of Democrats distrusting that source, and 67% of Democrats trust CNN, against the 58% of Republicans who distrust that source.[78] No single news network enjoys more than 48% of America's trust, and none comes remotely close to possessing a bipartisan viewer base.[79] Twenty-first century American news outlets are partisan content bubbles, complete echo chambers. With the effects of groupthink in mind, the truth that attention markets generate echo

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[76]   Joseph T. Klapper, *The Effects of Mass Communication*, 40 Social Forces 98 (1961).

[77]   *U.S. Media Polarization and the 2020 Election: A Nation Divided*, Pew Research Center (2020), https://www.pewresearch.org/journalism/2020/01/24/democrats-report-much-higher-levels-of-trust-in-a-number-of-news-sources-than-republicans/.

[78]   *Id.*

[79]   *Id.*

chambers renders the fact of mass news being an attention market commodity, within a partisan society, as an arguably causal structure behind partisan affective polarization. The effects are even more pronounced in a two-party environment. The next section shows that plurality voting systems all but assuredly induce such bipartism.

IV.   **Plurality Voting – Negative Advertisements and Identity**

Affective polarization is not a general trend of the times – other Western democracies, such as Germany and Norway, have experienced diminished affective polarization in recent years.[80] A great many differences distinguish the United States from other democratic countries, but one important distinction is inarguably the nation's institutional processes; including, as shown below, methods of elections.

Most of the world's democracies now employ some form of proportional representation, as opposed to the plurality approach of the United States. Of 43 European countries, 40 use proportional representation.[81] "Proportional representation" refers to a voting system which awards legislative seats to a party equal to the proportion of the vote awarded to the party; if a party earns 20% of the vote, they earn 20% of the legislative seats. An interesting note is the emphasis on parties rather than individual candidates, as in plurality voting. Speaking of, the plurality system, or first-past-the-post, awards legislative seats to the candidate

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[80]   Boxell et al., *Cross-Country Trends in Affective Polarization*, National Bureau of Economic Research, at 2 (2020), https://www.nber.org/papers/w26669.

[81]   Michela Palese, *Which European countries use proportional representation?*, Electoral Reform Society (December 26, 2018), https://www.electoral-reform.org.uk/which-european-countries-use-proportional-representation/.

which earned more votes than any other candidate vying for that particular seat. In a large enough race, a candidate could earn only 30% of the vote and still win the seat, because no one else earned as much; a minority could thereby rule over the majority. Further contrarily as compared to proportional representation, plurality voting awards no seats to runner-up candidates, leaving elections as winner-takes-all competitions.

Of particularly salient note is that proportional systems tend towards more positive affective evaluations of both in- and out-party members.[82] In another phrase, the partisans of proportional democracies are nicer and happier. In fact, conclusively, when controlling for the voting system of a nation, "[t]he most polarized countries are those with plurality voting systems,"[83] with partisans hosting greater hostility towards the opposition and their own party.[84] An intuitive explanation for the out-party animosity could be that plurality voting generates a certain existential anxiety regarding the outcomes of elections. The system, in this framing, "encourages partisans to view politics as a zero-sum struggle, prompting them to despise opponents who (they fear) will take all if their own party is defeated."[85] This would explain the "kinder, gentler" politics of proportionally represented nations,[86] as their election method does not snuff out the voices of minority factions or the massive-but-not-large-enough runner-up party;

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[82]   Gidron et al., *American Affective Polarization in Comparative Perspective*, Cambridge University Press, at 61 (November 2, 2020).

[83]   Jennifer McCoy and Murat Somer, *Toward a Theory of Pernicious Polarization and How it Harms Democracies: Comparative Evidence and Possible Remedies*, Annals of the American Academy of Political and Social Sciences, at 35 (November 26, 2018).

[84]   Gidron et al., *American Affective Polarization in Comparative Perspective* at 10.

[85]   *Id*. at 6.

[86]   *Id*. at 6.

proportional elections are not zero-sum, and so perhaps do not generate the same existential dread as plurality elections. Another explanation is suggested by the fact that, alongside greater affective polarization, nearly each of over six thousand voting districts employing plurality voting in each of over fifty countries experiences two-party environments.[87] This section asserts that plurality voting affectively polarizes not only, if at all, by the mere fact of its being zero-sum, but also because plurality voting nearly always induces two-party environments. Two-party environments then in their turn induce aggravating anti-out-party behaviors and beliefs. The following details the mechanism behind plurality voting's tendency to produce two parties.

Duverger's Law, described as a true sociological law, holds that plurality systems "work[] in the direction of bipartism; [though] it does not necessarily and absolutely lead to it in spite of all obstacles. The basic tendency combines with many others which attenuate it, check it, or arrest it."[88] The theorem essentially states that plurality systems are highly likely to generate two-party environments, though exceptions may occur, and empirics have since proven the claim.

Duverger's Law can be mechanically explained by the "wasted vote effect." This phenomenon describes the common reaction to the fact that, given the winner-takes-all approach of plurality elections, casting a ballot for a candidate with no chance of winning is essentially a wasted vote. Voters

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[87]   Was Duverger Correct? Single-Member District Election Outcomes in Fifty-Three Countries, by Matthew M. Singer at 201-03
[88]   *Id*. at 204

resultantly tend to cast their ballots insincerely, voting instead in reaction to who they perceive as the most likely to win.[89] In this way, the wasted vote effect causes people to vote based on their perception of how others are voting, rather than voting for what they individually believe in. Experimentation demonstrates that many people typically use information about how their peers are voting when deciding their own vote.[90]

Van der Straeten et al. offer an example: in their study, 734 subjects voted among five fictitious candidates under several different election rules. The candidates were located at five distinct points on a one-dimensional axis, simulating ideological positions along a left-right spectrum. Each subject was randomly assigned their own position on the axis, to reflect their character's ideology in the experiment. To simulate the stakes of the election, each subject was paid twenty euros minus the distance between their position and the candidate who ultimately wins. Each subject knew the distribution of the positions on the axis but not who among the group filled each spot, replicating the fact of general knowledge about the ideological distribution of one's peers. The research team took this completed distribution and used various pre-defined heuristics to predict how each subject would vote. For example, strategic voting, the heuristic which guides voters to maximize the utility of their ballot by choosing the candidate nearest to them who is most likely to win based on their knowledge of how others are likely to vote. Strategic voting contrasts with sincere voting, which instead sees the voter casting their ballot in favor of the candidate closest to

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[89]   Voter Coordination in Elections: A Case for Approval Voting, by Durand et al at 2

[90]   Timothy J. Fedderson, *A Voting Model Implying Duverger's Law and Positive Turnout*, 36 American Journal of Political Science 938, 952 (November 1992).

their character, the best option in terms of overall personal reward. Under a plurality regime, 86.7% of votes in the study were predicted by strategic voting.[91] Sincere voting predicted 45% of the votes.[92] Another heuristic tested was "top-two," describing the rule to vote only between the two candidates most likely to win given how others will vote. 80.1% of votes were predicted by the top-two heuristic under a plurality regime.[93] Of note also is that plurality voting saw concentrations of votes on two candidates, while other voting methods saw three or more.[94]

Two-round voting was one such alternative method. Under this approach, voters initially choose from among the entire field of candidates, and if no candidate earns over 50% of the vote, then candidates above a certain threshold of the vote are put onto a second ballot. Strategic voting predicted only 63.2% of votes under two-round voting, but still more than the 54.9% predicted by the sincere heuristic.[95] Note, though, the increased sincerity as opposed to plurality voting. Furthermore, instead of strategic voting, the most predictive heuristic in two-round voting proved to be the top-three heuristic, predicting 75.6% of the votes.[96] With nothing else differentiating these trials other than the voting system, this study strongly suggests, if nothing else, that voting rules impact voting behavior. The study did observe, however, that plurality voting saw concentrations of votes on

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[91] Van der Straeten et al., *Strategic, sincere, and heuristic voting under four election rules: an experimental study*, 35 Social Choice and Welfare 435, 448 (2010).
[92] *Id.*
[93] *Id.*
[94] *Id.*
[95] *Id.* at 449.
[96] *Id.*

two candidates while two-round voting saw concentrations on three.[97] The study therefore demonstrated not only that voting rules impact voting behavior, but also that plurality voting seems to induce voters into selecting between two candidates when other systems tend to select for three or more.

Matthew M. Singer provides further evidence supporting Duverger's Law with real-world observations. In his analysis of 6,745 district-level plurality elections from 53 countries, the top two parties gained, on average, over 90% of the votes.[98] Notice the similarity between this figure and the predictive success rate of the strategic heuristic given plurality voting in Van der Straten et al.'s study. Singer further found that, while third parties did sometimes exist under plurality regimes, they were rarely if ever viable, affecting elections only by siphoning votes away from the top two parties; kingmakers in one sense, spoilers in another.[99]

Singer describes his finding in other terms, as well: for the 22 plurality countries in the study, the effective number of parties (ENP) was 2.203, significant with p<.001.[100] The ENP describes the number of parties that receive consequential amounts of the vote. The standardized formula used among this body of literature is $\frac{1}{\sum v_i^2}$ where v is the proportion of the vote

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[97] Van der Straeten et al., *Strategic, sincere, and heuristic voting under four election rules: an experimental study*, 35 Social Choice and Welfare 435, 439-43 (2010).

[98] Was Duverger Correct? Single-Member District Election Outcomes in Fifty-Three Countries, by Matthew M. Singer at 201-03

[99] *Id*. at 214

[100] *Id*.

that party *i* earned.[101] So, with six parties, each respectively earning 30%, 40%, 10%, 10%, 2.5%, and 2.5% of the vote, the ENP is 3.69. An ENP of 2.203 describes an environment with essentially two parties, with a few or perhaps one other party that siphons a small amount of the vote, enough to generate consequences but not enough to establish more than two viable parties. The ENP thereby reflects the prior statistic describing the proportion of the vote owned by the top two parties in plurality systems. Singer also observed the Second-First Loser (SF) ratio, describing the ratio of votes between second and third place, and the Third-First Loser (TF) ratio, comparing second and fourth place. For the 22 plurality countries, the SF ratio was 0.155, significant with $p<.01$, with a statistically insignificant TF ratio of 0.116.[102] The SF ratio communicates that, in plurality countries, third place typically receives only 15.5% of the votes cast for second place, a massive gap denoting a two-party environment. Singer contrarily found that countries employing a majority system, such as two-round voting, possessed an ENP of 3.8,[103] a healthy three- and sometimes 4-party environment. Countries under proportional representation produced an ENP of 2.68,[104] lower than majority systems but still showing a tendency towards true three-party environments. While notable exceptions exist, such as Canada and India,[105] empirics paint a broad trend in support of the truth that plurality voting tends to induce bipartism while alternative voting systems do not.

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[101] *Id.* at 209 n.52
[102] Was Duverger Correct? Single-Member District Election Outcomes in Fifty-Three Countries, by Matthew M. Singer at 214
[103] *Id.* at 215
[104] *Id.* at 216
[105] *Id.* at 219

A final example in support is the natural experiment provided by New Zealand in 1996. Then, the nation transitioned from plurality voting to proportional representation. Two parties composed the New Zealand legislature prior to 1996, but three years later, their parliament housed seven parties.[106] The growth proved resilient – by 2005, eight parties occupied the New Zealand legislature.[107] The resulting takeaway from the tale of New Zealand is that, in changing just the voting rules, the number of viable parties in the national government rose from two immediately, and the adjustment proved potentially long-term. Plurality voting assuredly induces bipartism, in contrast with other voting methods. The rest of this section discusses how two-party environments affectively polarize an electorate, especially given partisan echo chambers.

By the fact of plurality voting inducing voters to narrow the electoral field to the top two candidates, candidates and their parties are freed to deploy negative campaign advertisements against one another, affectively polarizing the electorate in consequence. "Negative advertisements" are tools to chip away at the support for opposing candidates by broadcasting shameful information about that candidate, painting them in a bad light in the hopes that the candidate becomes unlikeable.[108] As it so happens, two-party environments empirically tend to experience greater deployment of negative advertisements: in looking at 343 primary races in the United States across the years 2002, 2004, and 2008 – a useful sample because of

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[106]   Vowles et al at*., Forecasting and Evaluating the Consequences of Electoral Change in New Zealand*, 41 Acta Politica 267, 272 (2006).

[107]   *Id.*

[108]   Lau et al., *The Effects of Negative Political Campaigns: A Meta-Analytic Reassessment*, 69 The Journal of Politics 1176, 1180 (2007).

the variable number of viable candidates within the same voting rules, voting culture, and parties – races with two candidates had a more than double likelihood of airing negative advertisements when controlling for State and candidate demographics.[109] Furthermore, on average, two-party races are more likely to see a party respond in-kind to an attack advertisement – an opponent in a two-party race responds 51% of the time, as opposed to 21% in multi-party races.[110] Compared to races with three or more parties, candidates in two-party races are both more likely to deploy negative advertisements and retaliate with their own negative advertisements when targeted.

New Zealand is a useful record again in that negative advertisement usage declined after the transition away from plurality voting to a proportional voting method.[111] Analyzing 252 election broadcasts aired in New Zealand between 1969 and 2011 revealed that about a third of advertisements were negative prior to 1996, while afterwards only about a fifth were, a significant difference with $p<.005$.[112] After New Zealand stopped employing plurality voting, the nation experienced significantly fewer negative political advertisements. This information does not prove that the voting system transition caused the diminished usage of negative advertisements, too much is left uncontrolled for, but the association is undeniable. Echoing this result also is a study of 23 elections in three

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[109]   Gandhi et al., *Negative Advertising and Political Competition*, 59 The Journal of Law, Economics, & Organization (2007), at 435-37, 456, https://www.montana.edu/urban/documents/JLEODraft.pdf.

[110]   *Id.*

[111]   *Id.* at 457.

[112]   Travis N Ridout and Annemarie S Walter, *Party system change and negative campaigning in New Zealand*, 21 Party Politics 982 (November 2015).

separate countries, finding higher levels of negative political advertisements in the British two-party system than in the German and Dutch multi-party systems.[113] Even further support is an evaluation of videos aired by 72 parties across 13 elections in 13 countries which found that districts with multiple viable candidates as opposed to two experienced lesser negativity.[114] When there are only two clear choices in elections, international comparisons indicate that negative political rhetoric is more frequent. Several plausible mechanisms exist as to why.

An economic rationale for why two-party environments experience greater usage of negative advertisements is that "when the number of competitors is greater than two, engaging in negative ads creates positive externalities to those opponents that are not the object of the attack. In contrast, positive ads only benefit the advertiser."[115] To put it another way, candidates who attack another candidate in a poly-competitor race incur a cost in the form of the resources necessary to publish the advertisement, and the resulting benefit is potentially experienced by every non-attacked competitor, or even select competitors other than the attacker; if A attacks B, then B's voters may move to C or D rather than A.[116] This idea manifests itself in the marketplace, as, though "some very well-known negative

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[113]   Travis N Ridout and Annemarie S Walter, *Party system change and negative campaigning in New Zealand*, 21 Party Politics 982 (November 2015).

[114]   *Id.*

[115]   Gandhi et al., *Negative Advertising and Political Competition*, 59 The Journal of Law, Economics, & Organization (2007), at 434, https://www.montana.edu/urban/documents/JLEODraft.pdf.

[116]   *Id.*

advertising campaigns exist (e.g. Apple versus Microsoft)," negative advertisements are elsewise rather rare.[117]

Despite studies suggesting that votes do not change in response to negative advertising,[118] political candidates seem to be either unaware or disbelieving. Former Democratic president pro tem of the New Mexico State Senate Ricard Romero, for example, was quoted saying: "Ugly, combative, negative advertising targeting a political opponent works. You can see your opponent's favorable polling numbers degrade while the negative ad runs."[119] So long as candidates continue to believe in the efficacy of negative advertising, the calculus of externalities may very well be playing in their minds.

Another explanation for the lessened animosity in poly-party in environments is that "parties need to form and maintain governing coalitions" in those environments,[120] which is made difficult if the parties are openly hostile to one another. In the Dutch multi-party system, for example, "parties with the least 'coalitional potential' are those most likely to attack other parties."[121] Jennifer McCoy and Murat Somer describe that parties in environments which facilitate greater numbers of viable candidates understand that coalitions are necessary for control once in government.[122]

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[117] *Id.*

[118] Lau et al., *The Effects of Negative Political Campaigns: A Meta-Analytic Reassessment*, 69 The Journal of Politics 1176, 1185 (2007).

[119] *Id.* at 1177.

[120] Gidron et al., *American Affective Polarization in Comparative Perspective*, Cambridge University Press, at 45 (November 2, 2020).

[121] Travis N Ridout and Annemarie S Walter, *Party system change and negative campaigning in New Zealand*, 21 Party Politics 982 (November 2015).

[122] Jennifer McCoy and Murat Somer, *Toward a Theory of Pernicious Polarization and How it Harms Democracies: Comparative Evidence and Possible Remedies*, Annals of the American Academy of Political and Social Sciences, at 12 (November 26, 2018).

Strategy therefore dictates a reluctance to use negative advertisements, to preserve coalitional potential. With just two parties in a winner-takes-all arrangement, though, collaboration is not required, leaving the parties more willing and able to actively attack the voter-base of their opposition.[123]

A similar explanation is described by what Gary W. Cox calls "centripetal and centrifugal forces."[124] Parties share an ultimate goal: win sufficient votes. Generally, a vote-seeking party acts to maximize their votes to maximize their chances of earning the sufficient amount, and so seek the single position on the spectrum which appeals to the largest number of voters – the Condorcet position.[125] Imagining an ideological spectrum grid spackled with dots representing individual voters, the Condorcet position is the direct center, the median voter; the location nearest to the largest number of dots. The fact that the Condorcet position is the optimal position from a vote-winning perspective generates a "centripetal force," drawing parties inwards towards that central position in their quest for votes. Obviously, no two parties can simultaneously occupy the Condorcet position, or else they would not be two separate parties. Cox's model thereby predicts that parties under bipartism will be drawn towards the center until they collide and begin to distinguish themselves from one another out of necessity; if they were the same, then voters would have no reason to choose one party over the other. Victory would then be more like a lottery.

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[123] Jennifer McCoy and Murat Somer, *Toward a Theory of Pernicious Polarization and How it Harms Democracies: Comparative Evidence and Possible Remedies*, Annals of the American Academy of Political and Social Sciences, at 12 (November 26, 2018).
[124] Gary W. Cox, *Centripetal and Centrifugal Incentives in Electoral Systems*, 34 American Journal of Political Science 903, 904, 914 (November 1990).
[125] *Id*.

Cox's model thereby generally describes that in a multi-party environment where the plurality of votes is needed to win, parties have a choice: either strive for the majority vote and fight for the Condorcet position, or settle for a sufficient amount of votes and retreat to a separate niche elsewhere along the ideological spectrum. In a two-party environment, retreating is conceding, as the other party will be free to seize the single winning position. Bipartism is thereby more likely to experience the two parties fighting over the Condorcet position according to Cox's model, each asserting their own claim to the position while discrediting the other's.

With three parties, though, the risk of "squeezing" emerges.[126] With only two parties, each party can passively claim one of the two wings of the ideological spectrum and focus entirely on vying for the center, because the voters in the extremes have no other option; although the two parties are both central, and so located remotely from the voters in the wings, being just slightly to the left or right renders a party representative of the entirety of their chosen wing, simply because there are no other competitors in that region of the spectrum. In such an environment, the parties will focus largely on the issues which the center voters care about, since the parties are both claiming to represent them. At the same time, the parties will each take opposing stances on issues which every voter cares about, to signal which wing the party represents and to galvanize that wing to actually get out and vote; claiming a wing means nothing to a party if that wing does not vote. With three parties vying for the central position, though, parties lose the

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[126] Gary W. Cox, *Centripetal and Centrifugal Incentives in Electoral Systems*, 34 American Journal of Political Science 903, 904, 914 (November 1990).

option of passively representing the left or right. Now, one of the wings will face competition, resulting in one party inevitably without the support of either the left or right. That party will have been squeezed by the other two parties, representing the center position but no other, guaranteeing defeat. The consequential fear of squeezing generates a "centrifugal force," causing parties to compete for the perception of being slightly more extreme than one another, to avoid being seen as the most central party. The presence of three or more parties, then, increasingly pulls parties away from the ideological center.

Note that in tripartism, parties seek to occupy different locations along the spectrum, while in bipartism, the parties seek the same position. The former grants parties the option to focus entirely on shaping their own identity. Bipartism, on the other hand, incentivizes parties into also shaping voter perception of the opposition's identity, to discredit their claim to the position which both parties seek.

See below for a visual representation of the centripetal and centrifugal force model.
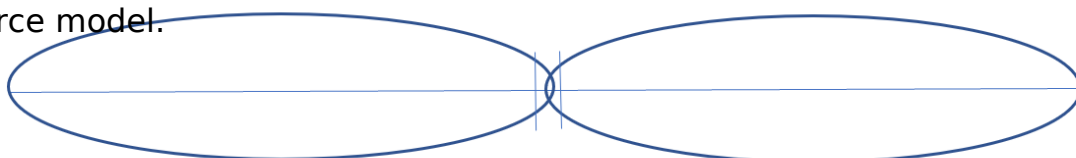
With only two parties, they will centralize, but will retain a slight divergence from each other in order to capture their respective wings of the ideological spectrum.
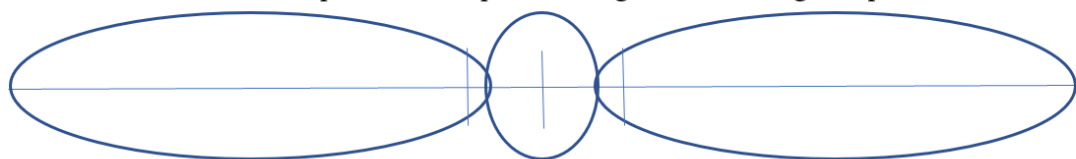
If there are more than two parties, centralizing is dangerous, as those just on the outside will capture the wings and leave the center party squeezed.
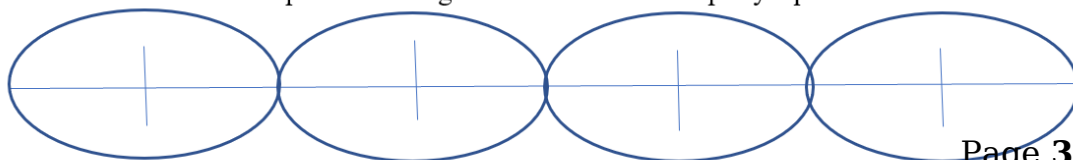
Eventually, a multi-party environment will have more broadly distributed parties along the ideological spectrum, as each party will attempt to polarize themselves from each other in order to avoid being squeezed.

This model maps well to the electoral history of the United States. In 1950, the American Political Science Association Committee on Political Parties published "Towards a More Responsible Two Party System," a ninety-eight page article covered by one of the most popular and widely read American news agencies, The New York Times. The document explained that the contemporary parties had rendered voters confused about who to vote for and why, because they were too similar.[127] In the terms of the model, the parties had centralized to the point of convergence upon the Condorcet position, becoming indistinguishable. The model would then predict that the parties would try to distinguish themselves in some way without losing control over the center, to dislodge the other party instead of conceding the winning position, and the American parties did just that.

Following the 1950's, the United States experienced a sharp increase in the usage of negative political advertisements, media designed to diminish positive affect for the target among the target's voter-base; in another phrasing, media designed to affectively polarize partisans.[128] In 1960, negative advertisements comprised less than 10% of those aired.[129] By this point, the parties were still focusing on staking their own claim to the Condorcet position. In 1996, though, in the years after converging upon that position, the proportion rose to about 45%.[130] In 2008, 60% of American

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[127] Ezra Klein, *Why We're Polarized* (2020).

[128] Lau et al., *The Effects of Negative Political Campaigns: A Meta-Analytic Reassessment*, 69 The Journal of Politics 1176, 1180 (2007).

[129] John G. Geer, *Fanning the Flames: The News Media's Role in the Rise of Negativity in Presidential Campaigns*, Joan Shorenstein Center (2009), at 4, https://shorensteincenter.org/wp-content/uploads/2012/03/d55_geer.pdf.

[130] *Id*.

political advertisements were negative.[131] A mere two years later, in 2010, fully 80% of those advertisements were negative.[132] The two American parties had identified the Condorcet position around the year 1950, and, through the use of positive advertisements, had both successfully laid claim to that identity through to 1960. Thereafter, with no fear of being squeezed out of victory, both parties decided to retain that position rather than retreat and concede. Through the use of negative advertisements, the two American parties increasingly worked to discredit the opposition's identity rather bolster than their own.

Worth reiterating is the fact that rising deployment of negative political advertisements is not a general trend of Western democracies. Another post-industrial democracy, Germany, saw no change in the level of negative campaigning between 1949 and 2017, as derived from a review of 1,857 political advertisements.[133] No, instead, a specific trait of the United States must be at fault. Empirical evidence suggests this trait to be bipartism. Whether due to a lack of deterrence in the form of cost-benefit, the need for coalitions, or the fear of being squeezed, historical records establish beyond a doubt that two-party environments see greater usage of negative political advertisements. The rest of this section evidences the effectiveness of

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[131] John G. Geer, *Fanning the Flames: The News Media's Role in the Rise of Negativity in Presidential Campaigns*, Joan Shorenstein Center (2009), at 4, https://shorensteincenter.org/wp-content/uploads/2012/03/d55_geer.pdf.

[132] Gandhi et al., *Negative Advertising and Political Competition*, 59 The Journal of Law, Economics, & Organization (2007), at 433-34, https://www.montana.edu/urban/documents/JLEODraft.pdf.

[133] Dennis Steffan and Niklas Venema*, Personalised, de-ideologised and negative? A longitudinal analysis of campaign posters for German Bundestag elections, 1949-2017*, 34 European Journal of Communication 267, 280 (2019).

negative advertisements, suggesting thereby the issue of their use in an environment containing partisan echo chambers.

While negative advertisements seem to fail at their mission of dislodging support for a target, they have proven an effective means of galvanizing animosity among antagonists of a target. In a review of 31 studies, 22 found that negative advertisements successfully diminish positive affect for the target.[134] Notably, there exists reason to believe that the effect is not due to any new knowledge gained about the target's policies; that the reaction induced does not involve ideology. A study by Sood and Iyengar found that voters walk away from negative advertisements with little to no new knowledge about the issues discussed.[135] The information contained within the advertisement is then clearly not the focus of the typical partisan viewer. The only remaining elements of advertisements are the identities of the speaker publishing the advertisement and the target. With the prior discussion of partisanship in mind, the aggravated negative affect must then be based in the viewer's identity relative to the speaker and target of the advertisement. Researchers in describing the mechanism behind this process assert as much, claiming that negative advertisements galvanize animosity by reinforcing partisan identity and confirming biases they hold against the target of the advertisement.[136] Negative advertisements cause viewers to dislike the

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[134] Lau et al., *The Effects of Negative Political Campaigns: A Meta-Analytic Reassessment*, 69 The Journal of Politics 1176, 1182 (2007).et al at 1182

[135] Guarav Sood and Shanto Iyengar, *Coming to Dislike Your Opponents: The Polarizing Impact of Political Campaigns*, at 2 (2016), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2840225.

[136] Iynegar et al*., Affect, Not Ideology: A Social Identity Perspective on Polarization*, 76 The Public Opinion Quarterly 405, 427 (2012), https://www.jstor.org/stable/344c7d05-ddb7-

target more, not by educating the viewer about the target but by reinforcing the viewer's preconceived notion that the target is bad; a notion sourced from the relationship between the viewer and target's identities. Furthermore, and perhaps unsurprisingly, the greater the amount of time spent viewing negative advertisements, the greater the effect on individuals.[137]

This may explain why Sood and Iyengar found in an analysis of American elections across three separate years that the difference between trait ratings of supported and opposed candidates grows over the course of campaigns;[138] the consistent exposure to negative advertisements progressively worsens the perception of partisans of their opposition. The phenomenon may also explain why senses of partisanship increase over the course of campaigns, and increasingly so with each passing year – the proportion of partisans claiming a "strong" connection with their partisan identity always shows a "significant gain over the course of the campaign, especially toward the closing stages," and this pattern was "noticeably stronger in 2008 than in 2000."[139] If it were the case that partisanship naturally strengthens as election day grows closer, there should be no difference between 2000 and 2008. Perhaps an explanatory accompanying trend, then, is the progressively frequent usage of negative advertisements over this period; media which operates by reinforcing partisanship.

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[137] Lau et al., *The Effects of Negative Political Campaigns: A Meta-Analytic Reassessment*, 69 The Journal of Politics 1176, 1185 (2007).

3339-b508-99451740addf.

[138] Guarav Sood and Shanto Iyengar, *Coming to Dislike Your Opponents: The Polarizing Impact of Political Campaigns*, at 9-11 (2016), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2840225.

[139] *Id*. at 15.

Furthermore, more advertisements air closer to election day,[140] thereby explaining at least part of why partisanship spikes around then.

Heightened partisanship translates directly to aggravated affective polarization. A stronger connection to one's party identity means that the identity is more salient to that individual, and with saliency comes exacerbated out-group biases.[141] Therefore, with negative advertisements responsible for at least some of the heightened partisanship experienced over the course of campaigns, the increased partisanship serves itself as evidence that negative advertisements affectively polarize.

Iyengar further analyzed the power of negative advertisements in a study comparing the rates of affective polarization in battleground States with the rates among the rest. Battleground States materially differ in that they receive greater attention from candidates during campaigns, airing more advertisements than elsewhere. Using data from a 2008 AP-Yahoo! News study, Iyengar found that affective polarization significantly increases for the whole country over the course of campaigns, with p<.05, but battleground States experience significantly sharper increases.[142] One important data point supporting this assessment was evidence of the difference between trait ratings of supported and opposed candidates, which grew at a faster rate in battleground States.[143] The balanced composition of

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[140] Jonathan S. Krasno and Donald P. Green, *Do Televised Presidential Ads Increase Voter Turnout? Evidence from a Natural Experiment*, 70 The Journal of Politics 245 (January 2008).

[141] *Infra*.

[142] Iynegar et al*., Affect, Not Ideology: A Social Identity Perspective on Polarization*, 76 The Public Opinion Quarterly 405, 425-27 (2012), https://www.jstor.org/stable/344c7d05-ddb7-3339-b508-99451740addf.

[143] Guarav Sood and Shanto Iyengar, *Coming to Dislike Your Opponents: The Polarizing Impact of Political Campaigns*, at 9-11 (2016), https://papers.ssrn.com/sol3/papers.cfm?

those States may also aggravate partisan animosity, but Iyengar concluded that the heightened exposure to negative advertisements arguably plays a part. Given Lau et al.'s finding that the more negative advertisements people are exposed to, the bigger the impact on them,[144] this conclusion is sound.

Of important note, though both parties publish negative advertisements, their effects are not thereby counterbalanced. A Democrat viewing a Republican advertisement does not experience diminished affect for Democrats, and the same is true for Republicans viewing Democrat advertisements. As Iyengar et al. describes, "American political campaigns activate and reinforce rather than alter voters' basic partisan predispositions."[145] If an advertisement does not align with pre-existing biases, it will not have an effect on the viewer, as was found: "ads prove[] persuasive only among voters who share[] the partisanship of the sponsoring candidate. Exposure to a single advertisement boosted support for the sponsor by 14 percent among in-partisans, but only 3 percent among independents and out-partisans."[146] Another Iyengar study of 1,900 battleground State residents observed how the participants reacted to political advertisements in real time. Individuals classified by party identity watched a series of ads while moving a slider to note how they felt about the advertisement at each moment. Observe the results on the next page. To an incredibly substantial degree, Democrats responded positively to Democrat

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abstract_id=2840225.

[144] Lau et al., *The Effects of Negative Political Campaigns: A Meta-Analytic Reassessment*, 69 The Journal of Politics 1176, 1185 (2007).

[145] Iyanger et al*., Polarization in Less than Thirty Seconds: Continuous Monitoring of Voter Response to Campaign Advertising*, in *Political Communication in Real Time* (2016).
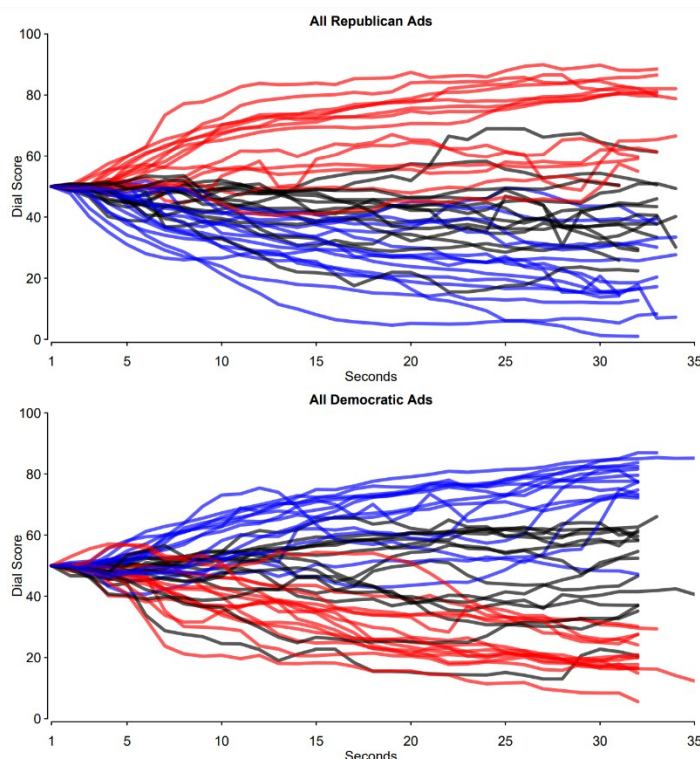
[146] *Id.*

advertisements and negatively to Republican ads, with the reverse remaining true.[147] No matter the content of a political advertisement, an American partisan only ever feels reinforced in their pre-existing positions, approving of their party while despising the other.

Tangential but notable, in a review of 40 studies, 33 found that negative advertisements also decrease affect for the attacker.[148] This then lends an explanation for why plurality systems empirically experience lesser affect for both in- and out-parties[149] – they are negative advertisement spaces.

Negative political advertisements successfully diminish affect for their targets when viewed by the publisher's in-party, and in areas with more negative advertisements, partisans experience heightened affective polarization. Negative political advertisements certainly contribute to the worsening American partisan conflict. Two-party environments moreover experience greater usage of negative advertisements, rendering the plurality voting system, which all but causes bipartism, at least in part responsible for the partisan culture war.

Figure 9: Average Partisan Response to Republican Ads, by Partisan Group. Red lines indicate second-by-second mean dial scores of Republican subjects; blue lines for Democrat subjects and black lines for Independents.

aigns: A Meta-Analytic Reassessment, *Comparative Perspective*, Cambridge

V. Conclusion – The Death of the American, and Paths Forward

Due to the plurality voting system employed in most American elections, the United States is trapped in a two-party environment. Such an environment strongly tends to experience greater partisan animosity than environments with three or more parties, explaining some of the present experienced vitriol. One causal factor for this seems to be the heightened deployment of negative political advertisements in two-party environments, due perhaps to the fact of bipartism lacking the same deterrents against the usage of negative advertisements which environments enjoying three or more parties generate. The presence of partisan negative advertisements further clarifies the path which Americans took towards this present furious moment, given the contemporary American attention market. The average American adult now spends a third of their waking lives sequestered into various identity-based echo chambers constructed by attention market actors. With the news media operating within this market, Americans receive their political information from sources based almost entirely around the viewer's identity, including their partisanship. In the present environment, one's party identity determines who an individual observes speak, in-person through their own choice and online through the market's choice, and so also what sources the individual is exposed to and perceives as trustworthy given the reality of conformity. The resulting partisan echo chambers divide Americans into two entirely separate worlds, each containing different elements and versions of true events, each framed specifically to appeal to the partisan identity. The forces of groupthink inevitably at play, the near

universally negative partisan rhetoric persistently radicalizes Democrats and Republicans in their respective echo chambers, progressively crystallizing the conflict against the possibility of any willingness to compromise. This is why, at least in part, political violence against persons is on the rise in the United States; this is why a third of the nation would like to see State secession; this is why Americans are increasingly viewing each other as evil villains which must be stopped at whatever cost. Partisan echo chambers have cleaved the United States in two. There is no longer a single nation of Americans within the United States. The 'American' has died, replaced by the sub-nationalities of Democrats and Republicans. This must soon be reversed, to avoid a repetition of great and terrible violence.

Fortunately, in understanding the sequence of this crisis, possible solutions become clear. By increasing the number of parties through deliberate construction of a voting method, parties can be forced into describing themselves rather than the opposition and also into cooperating with one another, leading to "kinder, gentler" politics. Negative advertisements could also be eliminated entirely as a vector of aggravation by having the form of communication ruled unlawful under the Voting Rights Act § 11(b). Breaching partisan echo chambers, though, is the most urgent step which must be taken soon. An inspiringly viable option towards this aim is the encouragement of widespread adoption of news aggregation software in the model of Ground News. The following details each of these options.

As is now widely known and evidenced herein, voting rules predictably affect the number of viable parties and their relative ideological composition.

Ranked-choice voting is increasingly popular in large part because it tends to result in three or more moderate parties. However, while ranked-choice eliminates much of the wasted vote effect, it fails to do so entirely. If a voter knows that their top choice would never win the majority vote, or they want to create an easier win for their top choice in the second round by first supporting a worse candidate, then they will adjust their vote accordingly; this was why the "top-three" heuristic outperformed the sincerity heuristic in Van der Straeten's trials under majoritarian voting. A superior voting process which completely eliminates the wasted vote effect, freeing people to vote sincerely, while also avoiding the generation of centrifugal force and so also avoiding extremism, is approval voting conditioned upon a two-vote minimum.

Approval voting allows voters to cast as many votes as they would like, up to one per candidate. Voters essentially mark every candidate which they would approve of in office, leaving the winning candidate as the one which most people would approve of. There is no cost to marking sincerely, as voters can also cast the strategic choice; there is then no wasted vote effect, and so the true Condorcet candidate is likely to be chosen every time. Approval voting furthermore eliminates all centrifugal force because elections are no longer zero-sum, enabling all parties to occupy the Condorcet position. This moderating force, pulling parties to champion what the largest number of people agree upon without feeling the need for distinction, should be the goal of any democratic system both on principle and out of the reasonable desire to avoid extremist politics. The benefit of

instituting a two-vote minimum is the fact that a third-party is thereby guaranteed to emerge. While bipartism is unlikely under approval voting, tripartism is assured with the added insurance of a two-vote minimum because every voter will always choose at least both their strategic choice and their sincere choice. With two-in-five contemporary American adults identifying with neither Democrats nor Republicans,[150] and with 58% of Republicans and 46% of Democrats desiring a third party,[151] the freedom and requirement to vote sincerely will result in a third American party by the fact of manifesting these desires.

As for how approval voting could be implemented, a single statute could be passed by Congress under Article I § 4 clause 1 of the Constitution: "The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators." A single law establishing approval voting with a two-vote minimum in all Federal elections could usher in, immediately if New Zealand is representative, freedom from bipartism for the United States.

While more parties generally leads to lessened deployment of negative advertisements, nearly if not every election in the world still sees their use. With these forms of political communication failing at their desired task of dislodging support for the opposition and their significantly deleterious

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[150]   Jeffrey M. Jones, *U.S. Political Party Preferences Shifted Greatly During 2021*, Gallup (January 17, 2022), https://news.gallup.com/poll/388781/political-party-preferences-shifted-greatly-during-2021.aspx.

[151]   Jeffrey M. Jones, *Support for Third U.S. Political Party Up to 63%*, Gallup (October 4, 2023), https://news.gallup.com/poll/512135/support-third-political-party.aspx.

effects on civic unity, negative advertisements should be erased from political discourse. In the United States, the Voting Rights Act § 11(b) establishes a means of doing so.

"No person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote, or intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for urging or aiding any person to vote or attempt to vote…"[152] Under § 11(b), negative advertisements could be considered attempts at intimidating communications designed to urge Americans to exercise their right to vote in a particular way. While advertisements are forms of speech, negative advertisements constitute "true threats," and are as such prohibited even under the First Amendment. While violation of a statute like the Voting Rights Act is not always sufficient to establish standing, precedent supports that American voters suffered a concrete harm from these negative advertisements in the form of emotional distress, and so any voter exposed to such advertisements possesses a justiciable claim. We can be confident as to this claim because of a recent case from the Southern District of New York.

In March of 2023, *National Coalition on Black Civic Participation v. Wohl* saw a federal district court, following a remand, render summary judgment in favor of the plaintiffs, finding that a particular instance of political speech from a political organization targeted towards specific voter demographics

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[152]   52 U.S.C. § 10307(b).

constituted a true threat and violated § 11(b).[153] The plaintiffs were a civil rights litigation firm and a collection of individual voters,[154] demonstrating also the private right of action established under the Voting Rights Act.[155] Two named individuals, the founder of a lobbying firm and a "political operative," and ten John and Jane Does constituted the defendants.[156] The particular facts at issue involved a robocall sent to about 85,000 people which asserted that law enforcement, creditors, and a government agency would use mail-in ballots to track people down.[157] The plaintiff's claim was that this communication intimidated people in violation of § 11(b).[158]

The court identified that "the crux of a Section 11(b)" analysis is "whether Defendants' conduct was intimidating, threatening, or coercive."[159] In the court's words: "To 'intimidate' means to 'make timid or fearful,' or to 'inspire or affect with fear,' especially 'to compel to action or inaction (as by threats).' To 'threaten' means to 'utter threats against' or 'promise punishment, reprisal, or other distress.' And to 'coerce' means to 'restrain, control, or dominate, nullifying individual will or desire (as by force, power, violence intimidation).'"[160] These definitions are cross-Circuit and

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[153] *National Coalition on Black Civic Participation v. Wohl*, 2023 WL 2403012 (S.D. N.Y. 2023).

[154] *Wohl* at *1.

[155] *Id*. at *19 ("Section 11(b) of the VRA reaches beyond government actors, affording a private right of action")(unlike 28 U.S.C. § 594).

[156] *Id*. at *1.

[157] *Id*. at *4 ("The Robocall message made three claims about mail-in-voting: (1) that the police will use vote-by-mail information to track persons with outstanding warrants; (2) that vote-by-mail information will be used by debt collectors to collect unpaid debts; and (3) that the Centers for Disease Control and Prevention (the "CDC") will access vote-by-mail information to track for mandatory vaccinations").

[158] *Id*. at *1.

[159] *Id*. at *20.

[160] *Wohl* at *20 n.20.

longstanding, rendering them predictably persuasive.[161] Older precedent

does add, though, that intimidation is not "simply to frighten," but rather to

inspire fear with the goal of "affecting future behavior."[162] More specifically,

as in this case, intimidation includes the implication of legal, economic, or

physical consequences as the result of particular action or inaction.[163] Even

more granularly, warning of specific and foreboding consequences of voting

in a particular way is conclusively a violation of § 11(b).[164] Suggesting

consequences like nuclear annihilation, the Great Depression, and violent

civil unrest for choosing to vote for the wrong candidate, as many American

negative advertisements have done,[165] fits this description. Further also, the

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[161] *U.S. v. Norton*, 808 F.2d 908, 910 (1ˢᵗ Cir. 1987) ("Webster's Third New International Dictionary (1976) defines "intimidate" as "to **make** timid or **fearful**; inspire or affect with fear; ***esp.* to compel to action or inaction** (as by threats)." The Unabridged Oxford English Dictionary (1933) says about the same: "to render timid, **inspire with fear**; to overawe, cow; in modern use *esp.* to force to or deter from some action by threats or violence." **Black's Law Dictionary** (5th ed. 1979) **places first the meaning that Webster's flags with "especially"** ("*esp.*") and that the OED calls typical "in modern use"; it says intimidation amounts to "unlawful coercion; extortion; duress; **putting in fear.**" **Certainly, the possibility exists of using the word to refer** *simply* **to 'putting in fear' or 'cowing.' Still, the more plausible common modern legal usage invokes an element of affecting future behavior"**)(emphasis added).

[162] *Id*. at 910-11 (""Fifth, the caselaw precedent is consistent with our conclusion. Norton has found one case in which a court said that intimidation "denote[s] two kinds of coercion." *Allis-Chalmers Co. v. Iron Molders' Union No. 125,* 150 Fed. 155, 173 (E.D.Wis.1906), *modified on other grounds,* 166 Fed. 45 (7th Cir.1908). The government has found two cases in which the courts defined intimidation more broadly. *United States v. Jacquillon,* 469 F.2d 380, 385 (5th Cir.1972), *cert. denied,* 410 U.S. 938, 93 S.Ct. 1400, 35 L.Ed.2d 604 (1973) ("to make fearful or to put into fear");*United States v. Baker,* 129 F.Supp. 684, 685 (S.D.Cal.1955) ("putting in fear"). But, in all these cases, coercion was inherent in the conduct charged; **the possibility of using explosives simply to frighten did not exist**; hence the court did not focus on the issue presented here") (emphasis added).

[163] *Id*. at *20 ("The Court explained that unlawful threats or intimidation under the statute need not be violent or physical, and may include communications inspiring fear of legal consequences, economic harm, dissemination of personal information, and surveillance").

[164] *Id*. ("…the Court remains persuaded that Defendants' conduct was intimidating, threatening, or coercive towards voters, especially Black voters, by warning of several specific and foreboding consequences of voting by mail").

[165] *See* The Living Room Candidate - Commercials - 1964 - Peace Little Girl (Daisy) (showing that the stakes of this election are nuclear annihilation); The Living Room Candidate - Commercials - 1988 - Willie Horton (suggesting that if Dukakis wins that murders and rapists will be set free amongst the public). The Living Room Candidate - Commercials -

Wohl court recounted judicial precedent and legislative history to assert the absence of an intent requirement for § 11(b) claims;[166] there is no need to prove that the speaker of the message intended to intimidate the listener, only that it would reasonably be expected to.

    Wohl also reaffirmed that, while political speech, including a political advertisement,[167] is typically protected by the First Amendment[168] even when it is "abusively" hyperbolic,[169] political speech which amounts to a "true

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    2004 – Turned the Corner (suggesting that the economy will fail on the level of the Great Depression if Bush wins); The Living Room Candidate - Commercials - 2012 – The Obama Plan (promising massively increased national debt, the loss of healthcare for 20 million people, increased taxes, increased energy prices, and medicare cuts which will "hurt" seniors if Obama wins) ("Well more than 75% of all presidential campaign ads in 2012 were negative"). The Living Room Candidate - Commercials - 2020 – Pero Ya No ("But Not Anymore") (suggesting that Trump's victory would lead to militant police violence and suffering for people of color, using recordings of past events).

[166] *Wohl* at *22-23 ("Defendants also advance the argument that they lacked the intent to intimidate, threaten, or coerce others from exercising their right to vote, and thus could not have violated Section 11(b). They rely on Arizona Democratic Party v. Arizona Republican Party and United States v. Nguyen for the proposition that the intimidation must be *intentional* for there to be a statutory violation. However, these cases do not support Defendants' intent argument. ... Moreover, this Court previously established that Section 11(b) of the VRA does not have an explicit intent requirement. See NCBCP I, 498 F. Supp. 3d at 480; see also LULAC, 2018 WL 3848404, at *3-4 (finding Section 11(b) does not have a specific intent requirement and that the omission of "for the purpose of" in the statutory text suggests that Section 11(b) has a "deliberately unqualified reach" compared to Section 131(b) of the Civil Rights Act). That no intent need be shown is evident not only in the statutory text but also in the VRA's legislative history. Congress omitted the phrase "for the purpose of" to broaden the reach of the VRA. (Protect Democracy Amicus at 4.) And in the House Report, then-Attorney General Nicholas Katzenbach testified that excluding a *mens rea* requirement was part of the design of the VRA. (See id. at 4-5 (indicating that Katzenbach noted that "no subjective 'purpose' need be shown ... in order to prove intimidation under [Section 11(b)]. Rather, defendants would be deemed to intend the natural consequences of their acts")).

[167] *Id.* at *27 ("The subject of mail-in voting is not inherently political, as it is not related to the actual substance of what may be found on a ballot, such as **public policy issues, candidate backgrounds and positions, or other pieces of legislation**")(emphasis added).

[168] *Id.* ("Though courts have tread cautiously when imposing restrictions on political speech, content-based restrictions of political speech have been permitted if they survive strict scrutiny. See Mackey, 2023 WL 363595, at *21 (citing Ariz. Free Enter. Club's Freedom Club PAC v. Bennett, 564 U.S. 721, 734, 131 S.Ct. 2806, 180 L.Ed.2d 664 (2011))").

[169] *Wohl* at *27 ("The Court recognizes that political hyperbole even when "crude," "abusive, and inexact" is protected speech. NCBCP I, 498 F. Supp. 3d at 479 (citing Watts, 394 U.S. at 708, 89 S.Ct. 1399)").

threat" is exempted from First Amendment protection.[170] A true threat, said

the court, is "speech that 'an ordinary, reasonable recipient who is familiar

with the context of the [communication] would interpret [] as a threat of

injury.'"[171] "Such threats can be proscribed 'even where the speaker has no

intention of carrying them out.'"[172] True threats also do not need to be

explicit or direct,[173] nor do they need to imply physical or violent

consequences.[174] The United States Supreme court has further defined the

prohibition against true threats as "protecting individuals from the fear of

violence and the disruption that fear engenders, as well as from the

possibility that the threatened violence will occur."[175] Put simply, speech is

prohibited as a true threat when it instills fear of personal harm given

specific action into the target observer.

The *Wohl* court found that putting the target of a political

communication in fear of legal, economic, or physical injury should they vote

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[170] *Id*. *24-25 ("…'true threats,' which are not entitled to First Amendment protection. … **As the Court found in prior postures**, Defendants' messages overstep their bounds as mere 'political speech' and cross into the territory of conduct constituting true threats") (emphasis added).

[171] *Id*. *24 (citing United States v. Turner, 720 F.3d 411, 420 (2d Cir. 2013)).

[172] *Id*.

[173] *Id*. (citing United States v. Turner, 720 F.3d 411, 420 (2d Cir. 2013))(Courts have also recognized the amorphous shape that a threat can take, acknowledging that it need not be conveyed in an explicit or direct manner. The Second Circuit noted that if courts were required to 'rigid[ly] adhere[ ] to the literal meaning of a communication without regard to its reasonable connotations derived from its ambience,' prohibitions on true threats would essentially be 'powerless against the ingenuity of threateners who can instill in the victim's mind as clear an apprehension of impending injury by an implied menace as by a literal threat.'")

[174] *Id*. (citing Virginia v. Black, 538 U.S. 343, 359, 123 S.Ct. 1536, 155 L.Ed.2d 535 (2003)) ("Additionally, such a threat need not be physical or violent, as non-physical injury likely falls within the purview of a 'true threat'… This Court thus finds that a threat of nonviolent or nonbodily harm can also constitute a 'true threat' that is excepted from First Amendment protection").

[175] *Virginia v. Black*, 1538 U.S. 343, 344 (2003).

in a certain way constituted a prohibited true threat,[176] especially given that

the communication lacked any cues for observers to know not to take the

information seriously.[177] The speaker, concluded the court, should have

foreseen that people would take the communication seriously,[178] and the fact

that people actually did take it seriously added further weight.[179] Moreover,

the court found that using combative language is evidence of an attempt to

intimidate, likely because that rhetoric creates an atmosphere of physical

aggression, and also found that deliberating and reflecting on where to

deploy the intimidating communications with intent to affect voting behavior

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[176] *Wohl* at *24-25 ("The Robocall, that is, the speech at issue, put a reasonable recipient familiar with the context of the Robocall in fear that an injury of a legal (arrest), economic (debt collection), or physical (mandatory vaccination) nature would occur if the recipient voted by mail. ... "The only reasonable interpretation of these statements is that they were designed to instill fear of voting by mail in potential voters, portending adverse consequences in order to induce a chilling effect so as to deter mail-in voting, or perhaps voting entirely. Despite Defendants' protestations that their conduct is not 'unprotected speech,' the undisputed evidence shows that their communication constitutes a 'true threat.'").

[177] *Id*. *28 ("In addition to the specific harms that the call threatened, Defendants dressed the call with a veil of legitimacy to mislead its listeners into believing the statements made in the call were true...The call markedly lacked any outlandish details or other cues that may indicate to an ordinary listener that it should not be taken seriously")/

[178] *Id*. *23 (citing Washington v. Davis, 426 U.S. 229, 253, 96 S.Ct. 2040, 48 L.Ed.2d 597 (1976)) ("Launching and broadcasting the Robocall resulted in voter intimidation, and as the Court previously noted, "normally, a person is presumed to have intended the natural consequences of his deeds"); at *17 n.19 ("...as Plaintiffs counter in their opposition, it was foreseeable that someone with a prior conviction, such as Steinberg, would hear the call and suffer emotionally because of the assertions made in the call. The fact that the Robocall could -- and was designed to -- reach voters who might share experiences or worries similar to those of Steinberg and induced such a response from its recipients lend credence to the insidious nature of Defendants' voter suppression operation")(communicating the presumption that a foreseeable result is an intended result).

[179] *Id*. *28 ("Indeed, that observation is reinforced by the Individual Plaintiffs, whose reactions to the Robocall demonstrate that it was not perceived as hyperbolic. Some of the Individual Plaintiffs, such as Sferes and Steinberg, were troubled by the call, and feared that voting by mail would negatively impact them for they had medical debt and a prior criminal conviction, respectively. NCBCP's BWR Metro Detroit also responded to the call seriously. Recognizing the harmful impact the call could have had on its community members, BWR Metro Detroit diverted resources from its Census outreach project to respond to this issue. It is thus disingenuous for Defendants to characterize their conduct as "rhetorical hyperbole," when the facts establish that the Robocall was broadcasted as a threat to deter Black voters from participating in the 2020 Election and its listeners interpreted it as such").

is weight towards finding a violation of § 11(b).[180] The appellate court upon review upheld the lower court's decision.[181]

When a political communication deliberately instills the fear of injury as a consequence of voting in a certain manner, for the purpose of affecting the target's voting behavior, it as an impermissible true threat and in violation of VRA § 11(b). Negative political advertisements which suggest devastating consequences resulting from voting in a particular manner for the purpose of directing the target demographic's vote against a particular candidate are impermissible true threats in violation of VRA § 11(b).

Regarding standing, the *Wohl* court found the *Spokeo* concreteness requirement satisfied by the presence of emotional distress, acting as the sufficiently close common-law analogue.[182] Causation was established by the

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[180] *Wohl* at *22-23 ("...the Robocall was a calculated attempt to deter Black voters by exploiting fears and stereotypes, and not merely the expression of an opinion. ... Defendants deliberated and reflected on their choice of cities and states to which they would disseminate the Robocall, settling on "black neighborhoods" and ultimately disseminating the call to cities with significant Black populations, all for the purpose of deterring voters -- in particular Black, Democratic voters -- from voting in the 2020 Election. They utilized combative language when developing their Robocall strategy, referring to their plan as a 'HIJACK[ing]' of the election and an 'attack.' ... "Launching and broadcasting the Robocall resulted in voter intimidation").

[181] *Id*. at *24 ("At prior stages of the litigation, the Court held that the statements made by Defendants constituted 'true threats,' which are not entitled to First Amendment protection").

[182] *Id*. at *17 n.19 ("For example, Winter found the Robocall "very scary and threatening" considering that she planned to vote by mail due to the risk of exposure to COVID-19 and believed that she now may need to vote in person. (Pls. Rule 56.1 Stmt. ¶ 19.) For Steinberg, the Robocall was "particularly traumatic" because he had a past nonviolent criminal conviction and was planning to vote by mail, which the Robocall warned could result in law enforcement tracking him down to arrest him. (Id. ¶ 20.) Defendants argue that the statutes at issue do not protect plaintiffs like Steinberg who have "delicate sensibilities." (Defs. MSJ Brief at 7.) However, as Plaintiffs counter in their opposition, it was foreseeable that someone with a prior conviction, such as Steinberg, would hear the call and suffer emotionally because of the assertions made in the call. The fact that the Robocall could -- and was designed to -- reach voters who might share experiences or worries similar to those of Steinberg and induced such a response from its recipients lend credence to the insidious nature of Defendants' voter suppression operation. The facts further demonstrate that the remaining Individual Plaintiffs each suffered an emotional injury. Daniel felt "angry," "powerless," and "threatened" when she received the Robocall, making her apprehensive of answering her phone. (Pls. Rule 56.1 Stmt. ¶

simple fact of the defendant being the publisher of the communication, and

redressability was established by the possible remedy of freedom from

similar experiences in the future.[183] Associational standing was also ruled

available for a legal organization to assist in bringing a § 11(b) claim.[184] With

the precedent of *Wohl*, a concerted effort could be undertaken to outlaw the

use of negative advertisements in the United States, eliminating a vector of

affective polarization.

The next and concluding solution offered by this paper to address the

American partisan crisis is arguably the most important: breaching the

partisan echo chambers through the use of news aggregation software.

While studies show that partisans tend to dismiss or are otherwise

unaffected by news media not aligned with their partisan identity, a robust

body of literature supports that this effect is more akin to friction rather than

a true wall. For example, Diana Mutz found that exposure to diverse views

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21.) Sferes had outstanding medical debt at the time she received the call and worried whether her information would be shared with debt collectors, causing her to feel "alarmed," "anxious," "angry," and "scared." (Id. ¶ 22.) Slaven felt angry and frustrated by the Robocall because it undid her efforts at getting out the vote in her community. (Id. ¶ 23.) Kennedy, Wolff, and Hart all indicated that they similarly felt upset, angered, infuriated, and irate because of the Robocall. (Id. ¶¶ 24-26.)").

[183] *Wohl* at *17 n.19 ("Further, by prevailing in this litigation, the Individual Plaintiffs' injuries would be redressed, as they would no longer be subject to Defendants' robocalls or similar calls infringing upon their right to vote in the future").

[184] *Id*. at *18-19 (citing Moya v. U.S. Dep't Homeland Sec., 975 F.3d 120, 129-30 (2d Cir. 2020) (finding that an immigration organization spending additional time servicing clients as a result of defendant's conduct was an opportunity cost constituting a perceptible impairment) ("Organizations may establish standing in two ways: "(i) directly, based on an injury to the entity itself, i.e. organizational standing, or (ii) in the organization's representative capacity, based on the injuries to its members, i.e. associational standing. ... An injury-in-fact to an organization may be demonstrated by showing that a defendant's actions caused "a 'perceptible impairment' of an organization's activities .... For example, an organization "divert[ing] money from its other current activities to advance its established organizational interests" would constitute a perceptible impairment ... a pecuniary loss of $160 alone would be sufficient to confer standing upon NCBCP as "a loss of even a small amount of money is ordinarily an 'injury'" for standing purposes"); *see also McGowan v. Maryland*, 366 U.S. 420, 424, 430 (1961) (finding that a fine of $5 plus costs was sufficient to establish associational standing)).

and lifestyles "generally increase[s] political tolerance."[185] The common explanation for these seemingly competing observations is that repeated exposure reinforces those alternative views, rendering people more likely to view alternative viewpoints as just that, alternatives, rather than oppositional or incorrect. It is easier to say one person is wrong in one instant than a large group of people over an extended period of time. Cass Sunstein has also found that, the more exposed an individual is to diversity, the less likely they are to prefer insulation and the more likely they are to actively seek out further diversity.[186] In other words, people are curious, and when shown an alternative perspective enough times to sufficiently overcome the friction of disbelief, people tend to want to know more. Consider the example of Caleb Kain. After watching a few YouTube videos, his profile was tagged as leaning to the right. Over time, he watched progressively extreme speakers, coming to hold these beliefs himself due to the forces of social influence and groupthink. Accidentally, however, Caleb one time clicked on a speaker from the left; he watched a perspective from outside his echo chamber. As Sunstein predicted, Caleb thereafter sought out more information from this perspective, and eventually abandoned his far-right beliefs in favor of more tolerant views, as predicted by Mutz.[187] Simple exposure to communications targeted at alternative identity groups is a potent force; remember that a single dissenter often eliminates the pressures behind conformity. Hence

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[185] Mutz, Diana Carole. *Hearing the Other Side: Deliberative versus Participatory Democracy*. Cambridge University Press, at 181, 184 (2011).

[186] Sunstein, Cass R. *#Republic: Divided Democracy in the Age of Social Media*. Princeton University Press, at 18 (2018).

[187] *Rabbit Hole*, New York Times.

why the model of Ground News offers a perfect solution to the problem of partisan echo chambers.

Ground News is a news media outlet which reports on other news media outlets. Through the use of contemporary artificial intelligence capabilities, Ground News analyzes articles published by dozens of news media outlets on a story-by-story basis, comparing the articles to reveal what rhetoric and facts remain the same across the bias spectrum. Helpfully, a simple summary of shared facts is generated by the software, providing a quick-to-read consensus report of the entirety of the press in the place of just one outlet. Yet, if the user still so chooses, every source article is easily available, and the user can switch between sources quickly with a single button. Through the use of news aggregation software like Ground News, partisans are truly freed from their partisan echo chambers, at least with regard to the all-important communications channeled through the news media.

Even more, news aggregation with modern technology also grants the power to act as a watchdog over the press. Ground News, for instance, tracks other news agencies through the use of several pre-existing and independent news bias ratings agencies to construct a profile for each outlet, denoting their objectivity. With the bias rating plastered front and center on each outlet, onlookers will feel something akin to Cox's centripetal force; with the common general desire for unbiased truth, clearly labeling which outlets are unbiased funnels viewers to those center-leaning news agencies, away from those presenting information leaning too far to the left or right. As

in elections, centripetal force is a beneficial force in the news media environment, moderating news channel rhetoric and at least somewhat unifying public perceptions of current events. Furthermore, through the use of financial filings, the news aggregation service identifies and broadcasts who ultimately owns each news outlet. With the possibility of holding companies obscuring true ownership to the general public, such news monitoring software creates a valuable guardrail against public manipulation through mass communication.

With the global stage now reliving the events of the latter half of the 1930's, the United States must take the actions necessary to calm the current partisan culture war. Only then can Americans collaborate sufficiently to defend themselves in this new age. In this aim, the nation critically needs to abandon the plurality voting system; no matter the mechanism, plurality voting empirically tends towards partisan animosity in contrast with most other voting methods. Choosing approval voting with a two-vote minimum is the best replacement option, as it frees voters to choose candidates sincerely, incentivizes moderate politics, and guarantees at least three parties. For full mitigation against affective polarization, outlawing the use of negative political advertisements under the Voting Rights Act § 11(b) is also strongly recommended. Last, news aggregation software must become pervasively adopted among the American electorate. Such software effectively breaches partisan echo chambers and pulls viewers towards more objective news agencies, combatting the spiral of silence and groupthink to cool public discourse towards a gentler degree and beginning the process of

overcoming the friction of disbelief to achieve general political tolerance. With the elimination of factors contributing to the worsening American partisan conflict, the nation will be that much closer towards national reunification around a shared civic identity, essential to the peaceful functioning of government.

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